Supreme Court, U.S.
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No. 00-408

In The

Supreme Court of the United States

PHILIP CONDON FISHER,

Petitioner,

v.

UNITED FEATURE SYNDICATE INC.
(a Scripps Howard Company), et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

REPLY TO BRIEF IN OPPOSITION

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REPLY TO QUESTIONS PRESENTED BY RESPONDENTS

I. The Tenth Circuit Court of Appeals is in direct conflict with the Seventh Circuit Court of Appeals, concerning the Statute of Limitations, 17 U.S.C. § 507(b). The "last discovered infringing act" and a "continunig wrong".

II. The Tenth Circuit Court of Appeals Test for copyright infringement, conflicts with other Circuit Courts; because the Tenth Circuit test rejected petitioner's legitimate "side-by-side" comparison, making the test incomplete and improper.

III. Seventh Amendment provides right to jury trial on all issues pertinent to awarded of statutory damages under Section 504(c) of Copyright Act, including the amount itself. FRCP 12(b)(6) is inapplicable and "moot," because the pro se petitioner was never notified of any specific defects in his Claims; and therefore had no opportunity to remedy his Complaint.

IV. 17 U.S.C. § 506(a)(c) and 18 U.S.C. § 2319. False Copyright Notice. Petitioner's indisputable proof of defendants' publication of false copyright notices (Fraudulently Certifying Prior Rights) are decisively relevant and inseparable from petitioner's specific claims for copyright infringement.

V. The copying of petitioner's purposely misspelled legal words, found only in petitioner's 1971 "CHIPPER" Manuscript, were identically misspelled; and published by the accessed defendants, later in time 1974 production, proving infringement. It was never the defendant's style of writing, to purposely misspell legal words for humor.

PARTIES

DENVER PUBLISHING COMPANY; E.W. SCRIPPS COMPANY; CHARLES SCHULZ CREATIVE ASSOCIATES; LEE MENDELSON, Producer; BILL MELENDEZ; BARR ARTHUR PRODUCTIONS INC.; WHOLESALE WAREHOUSING OF CANADA; CBS, INC.; NEWS AMERICA PUBLISHING INC.; KELLOGG COMPANY; METROPOLITAN LIFE INSURANCE COMPANY; CAPITAL CITIES/ABC, INC.; TCI OF COLORADO; GENERAL ELECTRIC COMPANY; TURNER BROADCASTING SYSTEM INC.; UNIVERSAL PRESS SYNDICATE INC.; SEARS ROEBUCK AND CO.; MONTGOMERY WARD & COMPANY; KACEY FINE FURNITURE; SOUNDTRACK; FINGERHUT CORPORATION; BEST BUY COMPANY; TYSON FOODS INC.; WALT DISNEY COMPANY; ADVANCE PUBLICATIONS INC.; S.I. HOLDINGS INC.; THOMSON CONSUMER ELECTRONICS; Respondents. KARTES VIDEO COMMUNICATIONS, A SCRIPPS HOWARD COMPANY, was dissolved to avoid liability, leaving Scripps Howard liable; and CYCLONE INC., skipped town to avoid petitioner's process server.

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STATEMENT OF THE CASE

For many years, the "It's A Mystery, Charlie Brown" movie was removed from the national market; and a "moratorium" was applied by United Feature Syndicate on the movie; and the Random House and Disney books; because they were warned by Petitioner they were infringing his "CHIPPER" copyrights. Consequently, petitioner had to wait many years until "It's A Mystery, Charlie Brown" came back on the market to file suit in 1996.

Petitioner Fisher studied copyright law extensively, in law libraries; and even though he is a pro se litigant, he understands copyright law. In 1977 Fisher illustrated the nationally syndicated comic strip "BRENDA STARR"; so petitioner understands the syndicate business. Respondents and the lower courts erroneously claim, Fisher wrote and drew only ideas and never used expressions of ideas; and therefore has no copyright protection for his registered Comic Strips and Manuscript. This is absurd. All authors know it is impossible to write dialogue for characters interacting, without using expressions of ideas.

Mr. Flink improperly responds to Fisher's registered Sunday "LANGSYNE" comic strip. So why is Mr. Flink responding for another law firm? Because Universal Press Syndicate waived its rights.

United Feature Syndicate (UFS) owns all copyrights on "PEANUTS"; and they never had any other registered copyrights featuring a Cowardly Sherlock Snoopy; prior to the converted 1974 "It's A Mystery, Charlie Brown" Video feature; and not until after they accessed Fisher's 1971 Sherlock "CHIPPER" Manuscript and Comic Strips, in 1972 and 1973; for an unprecedented 9½ months (Two weeks normal return time).

United Feature Syndicate published a false 1958 copyright notice on a 1974 Snoopy/Sherlock Dog in the 1974 and 1975 TV Guide; to claim prior rights. This factor is extremely relevant.

Mr. Schulz, a contracted cartoonist employed by United Feature Syndicate (UFS) could have utilized his inherent hero Snoopy, as a heroic Sherlock Dog; and wrote a different story, but he did not. Schulz copied Fisher's cowardly protected characterization, plot, subject matter, theme, identical problem, story purpose, motivation, underlying foundation, moral of story, sequence of events; and misspelled words.

United Feature Syndicate's (UFS) 1993 "DRABBLE" Comic Strip is an infringing copy (Coverup) of (UFS) "It's A Mystery, Charlie Brown." Copying from infringing works is itself infringement. Previous infringement is not a defense; an infringement of an infringement, is an infringement. *Gilmore v. Anderson* (1889, CC NY) 38 F 846.

Cases:

> Two works may correspond in plot closely enough to constitute an infringement. *Nichols v. Universal Pictures Corp.* (CA2 NY) 45 F.2d 119, cert. den 282 U.S. 902, 75 L. Ed. 795, 51 S. Ct. 216. It has been recognized that a complete plot or sequence of events is protectable. *Harold Lloyd Corp. v. Witwer* (Ca 9 Cal) 65 F.2d I, cert. dismd (U.S.) 78 L. Ed. 1507, 54 S. Ct. 94. If a defendant copies substantial portions of a plaintiff's sequence of events, he does not escape infringement by adding original episodes somewhere along the line. *Warner Bros, Inc. v. American Broadcasting Co.* (CA2 NY) 720 F.2d 231, 222 U.S.P.Q. 101. Characters of cartoon strips and comic books and their graphic depiction are protected as component parts of copyrighted words. *Walt Disney Productions v. Air Pirates* (1972, DC Cal) 345 F.Supp. 108. An individual character featured in a comic strip is a separate copyrightable component of the comic strip. *Walt Disney Production v. Air Pirates,* 581 F.2d 751 (9th Cir. 1978), cert. denied, 439 U.S. 1132 (1979); *King Features Syndicate v. Fleischer,* 299 F. 533 (2d

Cir. 1924) Appropriation of but part of copyright constitutes infringement of whole of copyright. *Brady v. Daly* (1897, CA2 NY) 83 F. 1007, aff'd 175 U.S. 148, 44 L. Ed. 109, 20 S. Ct. 62. Infringement is not predicated upon quantity of material pirated. *Gray v. Russell* (CC Mass.) F. Cas. No. 5728. Rule of de minimis non curat lex does not apply, although defendant used only small amount of copyrighted material, since portion taken was important. *Advertisers Exchange, Inc. v. Hinkley* (1951, DC Mo) 101 F.Supp. 801, 92 U.S.P.Q. 313, aff'd (CA8 Mo) 199 F.2d 313, 95 U.S.P.Q. 124, cert. den. 344 U.S. 921, 97 L. Ed. 710, 73 S. Ct. 388.

Mr. Flink improperly responds to Tyson Foods who WAIVED their response; and he distorts the legal facts. Though an appropriator of another's work enclose such portions as he takes within quotations, he is not thereby relieved from liability for infringement. *Gilmore v. Anderson* (1889, CC-NY) 38 F. 846.

RCA (Thomson Consumer Electronics) has no trademark or copyrights on the name "CHIPPER"; and per the trademark office, Thomson Consumer Electronics abandoned their trademark attempts. "HIS MASTERS VOICE" is the only registered RCA trademark; and the RCA dog was never named anything, let alone "CHIPPER." All these "CHIPPER" names were immediately and oddly published, after UFS was aware Fisher was filing suit. This is "Constructive Fraud"); and it exists where conduct, though not actually fraudulent, has all actual consequences and all legal effects of actual fraud. *Agair Inc. v. Shaeffer*, 232 Cal.App.2d 513, 42 Cal.Rptr. 883, 886. Breach of legal or equitable duty which, irrespective of moral guilt, is declared by law to be fraudulent because of its tendency to deceive others or violate confidence. *Daves v. Lawyers Sur. Corp.*, Tex.Civ.App., 459 S.W.2d 655, 657. Publishing Fisher's "CHIPPER" name nationally, was designed to deceive the public in the 1990's, making it appear Fisher stole his own name "CHIPPER," and put

Fisher's "CHIPPER" creation in disrepute. Why didn't they use the name SNOOPY? A copyright does not cover the title to a story, but a name ("CHIPPER") which has become and is closely identified with the work of a particular author, cannot, during the life of the copyright, be used so as to mislead, either in another Book or motion picture. *Patten v. Superior Talking Pictures Inc.* (DC-NY) 8 F.Supp. 196, 23 U.S.P.Q. 248.

COURSE OF PROCEEDINGS

Mr. Flink's personal attacks are unprofessional and scandalous. His bias opinions have nothing to do with the petitioner's relevant five questions. Mr. Flink's remark of a 128 page, 300 paragraph, 43 Claim Complaint is a lie. Petitioner in good faith dismissed 31 claims, solely to simplify the case. Petitioner has 12 remaining Claims. Each claim is a subject of a separate suit and one claim does not affect another. The first six claims: 3, 12, 14, 18, 19 and 22, are all repeat infringements (All within the 3 year statute of limitations) of "It's A Mystery, Charlie Brown." The remaining six claims are separate entities; and that leaves only 7 causes of action to review. Petitioner used only three paragraphs per claim, that were explicit and legally presented; and never "unintelligible." Petitioner is confident the Supreme Court will find his Petition For A Writ Of Certiorari understandable; and hence will realize his Claims are also distinct.

Mr. Flink and the Magistrate Judge falsely claim petitioner's exhibits were not served on any of the respondents. Petitioner's process server, served duplicate boxes of exhibits to Baker & Hostetler on Feb. 25, 97; Page 14 (217) of District Court Docket; and per "Manual for Complex Litigation Third"; 21.444; "Document Depositories," Page 77 and 78. On March 26, 1997, only one month later Magistrate Judge Donald E. Abram (who petitioner recused on April 7, 1997; and who refused to recuse himself) granted all pending motions to quash service of process, for Petitioner's failure to serve exhibits. This is

Malicious abuse of legal process. Willfully misapplying court process to obtain object not intended by law. *Hughes v. Swinehart*, D.C. Pa., 376 F.Supp. 650, 652. *Capital Elec. Co. v. Cristaldi*, D.C. Md., 157 F.Supp. 646, 648.

FAILURE TO RESPOND TO RULE 56 MOTIONS

FRCP 56; Motions for Summary Judgement, were totally ignored by respondents. They refused to answer in violation of the Rule 56 clear mandate. "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him." The District Court erred by not granting plaintiff his Summary Judgments. Per the Docket; no specific facts were filed by the defendants, to plaintiff's lawful Rule 56 Motions for Summary Judgment, other than mere allegations in opposition.

REASONS FOR GRANTING THE WRIT

The chicanery that has occurred in this case is unbelievable. Why did the Judges follow the recommendations of a recused Magistrate? There was no discovery, no deposition was ever taken of the petitioner by any counsel; there were no evidentiary hearings, no pre-trial hearing, no order by the court to remedy petitioner's complaint, because of unintelligibility; because in fact, it was perceptively understandable. There were total lies regarding exhibits not being served to defendants; and no legitimate replies were filed by respondents to motions filed by petitioner for Rule 56 summary judgements. Petitioner's Motion for borrowing the record on appeal, was rejected from the Appeals Court; after Mr. Flink borrowed it; a barred procedure; and Petitioner was also

rejected an Oral Argument, in violation of Fisher's (Freedom of Speech) First Amendment Rights.

I. THE TENTH CIRCUIT COURT OF APPEALS CONFLICTS WITH THE SEVENTH CIRCUIT COURT OF APPEALS CONCERNING INTERPRETATIONS OF 17 U.S.C. § 507(b).

The opinion of the Tenth Circuit conflicts with the Seventh Circuit Court of Appeals, 17 U.S.C. § 507(b); (The "last discovered infringing act" and a "continuing wrong"); adopted by the Seventh Circuit; concerning accessed Universal Press Syndicate's 1993 Sunday comic strip "For Better or For Worse" vs. Petitioner's registered 1975 Sunday "Langsyne" comic strip. Respondent's WAIVED their rights.

II. THE TENTH CIRCUIT TEST FOR COPYRIGHT INFRINGEMENT WAS INCOMPLETE AND IMPROPERLY APPLIED.

The Tenth Circuit Court wrongly concluded that petitioner relied exclusively on a cowardly Sherlock dog similarity. This is completely untrue; because if this were true, no precise "side-by-side" comparison of a 2,900 word "CHIPPER" Manuscript, with 527 substantial and striking similarities; plus copying of errors, would be in evidence.

See PETITIONER'S WRIT OF CERTIORARI, pages 11 and 12 covering many cases using a "side-by-side" comparison.

Mr. Flink's deceptive claim that Snoopy, created in 1950 entitles United Feature Syndicate to all rights since 1950, is a lie; and totally irrelevant. Every "Peanuts" comic strip or movie, is a separate registration, on the date it is received in the copyright office. There is no blanket copyright.

Mr. Flink and all other respondents, have retained all of Fisher's Exhibits, since February 25, 1997; and therefore Mr. Flink already knows the years 1962 and 1958 are fraudulent; and irrelevant. The 1962 drawing is legally nonexistent, as copyright letters prove. There is no separate registration for Snoopy as a Sherlock Dog in 1962 or 1958. That is exactly why Fisher brought the fraudulent 1962 and 1958 drawings into evidence, because he retains letters from the copyright office proving fraud; and because no separate registrations exist.

Mr. Flink continues distorting facts. Fact; Heroic Snoopy was portrayed as a Cowardly Humanized Sherlock Dog in the 1974 animated cartoon feature, "It's A Mystery, Charlie Brown." Snoopy was always portrayed as a Heroic humanized cartoon dog in the "Peanuts" comic strip. Quote Schulz: "Snoopy is a HERO!" Snoopy was never a Coward.

Fisher's registered "CHIPPER" Manuscript and Comic Strips involve an inherent cowardly cartoon Sherlock Dog; and this original "CHIPPER" feature, has no connection with a realistic version of any Sherlock Holmes books or movies.

"Defendants have been using the old 'scenes a faire' and 'public domain' device for decades; and Defendants always attempt to avoid the copyright by the 'old argument'; that various attributes of 'Sherlock Holmes' find prototypes or analogues among the heroes of literature and mythology." See petitioners Writ of Certiorari; pages 11 and 12. These cases publish resolutely analogous "side-by-side" comparisons.

All "CHIPPER" registrations are valid; and not in the public domain. Original episodes of petitioner's "CHIPPER" feature do not fall under any "scenes a faire doctrine"; and petitioner's copyrights are protected under the old law (1909) covering "all writings" of author; and the 1976 law "original with the author."

III. SEVENTH AMENDMENT TO THE CONSTITUTION PROVIDES A RIGHT TO A JURY TRIAL; DISMISSAL WAS IMPROPER.

FRCP Rule 38; Jury Trial of Right, shall be preserved to the parties inviolate.
Seventh Amendment provides right to jury trial on all issues pertinent to award of statutory damages under Section 504(c) of Copyright Act, including the amount itself.

THE LOWER COURTS' ALLEGATION OF FRCP 12(b)(6) INFRACTION IS MOOT.

The Lower Courts FRCP 12(b)(6) dismissal was improper and the respondents FRCP 12(b)(6); failure to state a claim for relief, is terminated. The petitioner's Claims enclosed well pleaded factual contentions. However, even if this factor was not the case, "pro se litigants are to be given reasonable opportunity to remedy the defects in their pleadings." See; *Reynoldson v. Shillinger,* 907 F.2d 124, 126 (10th Cir. 1990); *Jaxon v. Circle K Corp.,* 773 F.2d 1138, 1140 (10th Cir. 1985).

The Tenth Circuit did not adhere to their own rules; and never cited petitioner of specific defects in his Complaint. Therefore, the petitioner was never given an opportunity to remedy defects if there were any. The Tenth Circuits vague allegation of meritless and unintelligible claims is unethical and without foundation; and because of this factor, pro se litigant's pleadings were never construed liberally or held to a less stringent standard than formal pleadings drafted by lawyers.

"We must accept all the factual allegations as true and must draw all reasonable inferences in favor of the plaintiff." (This was never done). *Swanson v. Bixler,* 750 F.2d 810, 813 (10th Cir. 1984). "A case should not be dismissed for failure to state a claim unless the court determines beyond doubt that the plaintiff can prove no set of facts which would entitle him to relief." *Grider v. Texas Oil & Gas Corp.,* 868 F.2d 1147, 1148 (10th Cir.), cert. denied, U.S., 110 S.Ct. 76, 107 L.Ed.2d 43 (1989).

IV. RESPONDENT'S FALSE COPYRIGHT NOTICES ARE FIRMLY RELEVANT.

Civil 17 U.S.C. § 506(a)(c) and Criminal 18 U.S.C. § 2319.

Petitioner's indisputable proof of defendants' publication of false copyright notices, relates directly to fraudulent intent (Fraudulently Certifying Prior Rights); and are decisively relevant and inseparable from petitioner's specific claims for copyright infringement. Mr. Flink's ludicrous claim that the Tenth Circuit has no jurisdiction over petitioner's proof of false copyright notices is unethical. Petitioner's Complaint noted false copyright notices; and The Tenth Circuit Court should have taken decisive action, knowing respondent's broke the law. The civil and criminal aspects of this case overlap each other and therefore are applicable.

V. RESPONDENTS' COPYING OF PETITIONER'S PURPOSELY MISSPELLED WORDS, "BARATRY AND REPLEVEN"; PROVES THE "CHIPPER" MANUSCRIPT WAS RIGHT IN THE ACCESSED RESPONDENTS' HANDS.

Copying petitioner's purposely misspelled words proves infringement; because defendant never purposely misspelled legal words. Mr. Flink's habitual deceptions and distortions are disgusting. The facts claimed by United Feature Syndicate are: "Charles Schulz, never purposely misspelled words in the "Peanuts" comic strip." Schulz never used misspelled words to be funny; that is Fisher's writing style; and Fisher used it extensively in his "CHIPPER" feature. There is a world of difference between typographical errors; and purposely misspelled legal words to catch a plagiarist.

Schulz never used purposely misspelled words in the "Peanuts" strip. Source and proof: Hard-bound book entitled: GOOD GRIEF, The Story of Charles M. Schulz, Text Copyright 1989 by Rheta Grimsley Johnson Pharos Books, A Scripps Howard Company 200 Park Avenue,

New York, NY 10166. See Page 29; Quote: James L. Freeman, Managing Editor of United Feature Syndicate: "He (Schulz) misspelled weird once or twice early on, but I can't think of any other grammar or spelling infraction"; and Page 65; Quote: "He also is adamant about spelling and factual accuracy. If a strip makes a musical reference, Schulz has done his homework, copying exact scores for authenticity. Same goes for medicine, law, sports or religion." How true! How true!

Schulz copied Fisher's purposely misspelled words "BARATRY" and "REPLEVEN" exactly; because he didn't do his homework; and if he had, he would have correctly spelled the words; "BARRATRY" and "REPLEVIN." Conclusively, Schulz copied petitioner's errors and this is prima facie evidence of infringement. For stare decisis case law, on copying of errors, see page 15 of "Petition For A Writ Of Certiorari."

CONCLUSION

Mr. Flink's deceptive allegations, are obvious scare tactics to discourage the Supreme Court from giving petitioner a legitimate review. Mr. Flink's biggest fear is an unbias review of a "side-by-side" comparison of "CHIPPER" vs "IT'S A MYSTERY, CHARLIE BROWN," that would lead to a reversal; and a legitimate jury trial. Also, the amount of damages petitioner sought were proven itemized profits using the respondent's own figures. It is important to realize, the income from the "PEANUTS" comic strip empire, exceeds $176 Million dollars a year.

Pro se Fisher's remaining claims were illegally and improperly dismissed pursuant to FRCP 12(b)(6); because he was never given the opportunity to remedy any deficiencies. Petitioner Fisher's writ of certiorari should be granted, because without an ethical review and reversal, the nations syndicates will continue to enjoy a permanent license to infringe.

Respectfully submitted,
PHILIP CONDON FISHER
APS, IPA, IBA, ABI